

---

# Physicians' Responsibilities Under Hawaii's New Uniform Health Care Decision Law

On July 1, 1999 Governor Cayetano signed into law ACT 169 which creates a comprehensive, modified uniform health care decisions act. ACT 169 repeals current laws on Medical Treatment Decisions ("Living Will") and Power of Attorney for Health Care Decisions and consolidates them into a single statute. The following information describes physicians' responsibilities under the new law. *This document is intended as an informational guide only and not as legal advice.* For a complete copy of the law, please contact Heidi Singh, Director of Legislative/Gov't Affairs, at 536-7702, ext. 2241 or [hysingh@juno.com](mailto:hysingh@juno.com).

## Definitions

Advance Health Care Directive ("Living Will"): an individual instruction or a power of attorney for health care.

Agent: an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power.

Guardian: a judicially appointed guardian or conservator having authority to make a health care decision for an individual.

Primary Physician: a physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

Supervising Health Care Provider: the primary physician or the physician's designee, or the health care provider or the provider's designee who has undertaken primary responsibility for an individual's health care.

Surrogate: an individual, other than a patient's agent or guardian, authorized by this act to make a health care decision for an individual.

## Physician Responsibilities

A determination that an individual lacks the capacity, or has another condition that affects an individual instruction or the authority of an agent, shall be made by the primary physician, unless otherwise specified in a written advance health care directive. *A health care provider or institution may not require or prohibit the execution of an advance directive as a condition of providing care.*

### Revocation of advance health-care directive:

a) An individual may revoke the designation of an agent only by a signed written statement or by personally informing the supervising health-care provider.

b) An individual may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

c) A health care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution at which the patient is receiving care.

d) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

e) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

### Surrogate Health Care Decisions:

a) A patient may designate or disqualify any individual to act as a surrogate by personally informing the supervising health care provider. In the absence of such designation, or if the designee is not reasonably available, a surrogate may be appointed to make a health care decision for the patient.

b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available. Upon a determination that a patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the primary physician or the physician's designee shall make reasonable efforts to notify the patient of the patient's lack of capacity. The primary physician or the physician's designee shall make reasonable efforts to locate as many interested persons as practicable, and the primary physician may rely on such individuals to notify other family members or interested persons.

c) Upon locating interested persons, the primary physician, or the

physician's designee, shall inform such person of the patient's lack of decisional capacity and that a surrogate decision-maker should be selected for the patient.

d) Interested persons shall make reasonable efforts to reach a consensus as to who among them shall make health care decisions on behalf of the patient. The person selected to act as the patient's surrogate should be the person who has a close relationship with the patient and who is the most likely to be currently informed of the patient's wishes regarding health care decisions. If any of the interested persons disagrees with the selection or the decision of the surrogate, or, if after reasonable efforts the interested person are unable to reach a consensus as to who should act as the surrogate decision-maker, then any of the interested persons may seek guardianship of the patient by initiating guardianship proceedings pursuant to chapter 551. Only interested persons involved in the discussions to choose a surrogate may initiate such proceedings with regard to the patient.

e) If any interested person, the guardian, or primary physician believes the patient has regained decisional capacity, the primary physician shall reexamine the patient and determine whether or not the patient has regained decisional capacity and shall enter a decision and the basis for such decision in the patient's medical record and shall notify the patient, the surrogate decision-maker and the person who initiated the redetermination of decisional capacity.

f) A surrogate who has been designated by the patient may make health care decisions for the patient that the patient could make on the patient's own behalf.

g) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that ***artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.***

The surrogate who has not been designated by the patient shall make health care decisions for the patient based on the wishes of the patient, or, if the wishes of the patient are unknown or unclear, in the patient's best interest.

The decision of a surrogate who has not been designated by the patient regarding whether life-sustaining procedures should be provided, withheld, or withdrawn shall not be based, in whole or in part, on either a patient's preexisting, long-term mental or physical disability, or a patient's economic status. A surrogate who has not been designated by the patient shall inform the patient, to the extent possible, of the proposed procedure and the fact that someone else is authorized to make a decision regarding that procedure.

h) A health care decision made by a surrogate for a patient is effective without judicial approval.

i) *A supervising health care provider shall require a surrogate to*

*provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority.*

#### Decisions by a Guardian:

a) A guardian shall comply with the ward's individual instructions and shall not revoke the ward's pre-incapacity advance health care directive unless expressly authorized by a court.

b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

c) A health care decision made by a guardian for the ward is effective without judicial approval.

#### Obligations of Health Care Provider:

a) Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

b) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health care record, and if it is in writing, shall request a copy. If one is furnished, the provider shall arrange for its maintenance in the health care record.

c) A supervising health care provider who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian or surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

d) Except as provided in subsections (e) and (f), a health care provider or institution providing care to a patient shall:

1) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health decisions for the patient.

2) Comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

e) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience. A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is contrary to a policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

f) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medi-

cally ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

g) A health care provider or institution that declines to comply with an individual instruction or health care decision shall:

1) Promptly inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

2) Provide continuing care to the patient until a transfer can be effected; and

3) Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision.

h) A health care provider or institution may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.

#### Health Care Information

Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

#### Immunities

a) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution shall not be subject to civil or criminal liability or to discipline for unprofessional conduct for:

1) Complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

2) Declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

3) Complying with an advance health care directive and assuming that the directive was valid when made and has not been revoked or terminated.

#### Statutory Damages

a) A health care provider or institution that intentionally violates this chapter shall be subject to liability to the individual or the individual's estate for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

b) Anyone who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health care directive, shall be subject to liability to that individual for damages of \$2,500 or actual damages resulting from this action, whichever is greater, plus reasonable attorney's fees.

#### Other

##### This chapter shall not:

a) authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of the state.

b) authorize or require a health care provider or institution to provide health care contrary to generally accepted health care standards applicable to the health care provider or institution.

c) shall not authorize an agent or surrogate to consent to the admission of an individual to a psychiatric facility as defined in chapter 334, unless the individual's written advance health care directive expressly so provides.

d) shall not affect other statutes of the state governing treatment for mental illness of an individual involuntarily committed to a psychiatric facility.

e) shall not apply to a patient diagnosed as pregnant by the attending physician.